

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

|                                   |   |                      |
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| JOSEPH GILBERT,                   | : |                      |
| Petitioner,                       | : |                      |
| v.                                | : | Case No. 3:15-cv-442 |
| MICHELLE MILLER, Warden,          | : | JUDGE WALTER H. RICE |
| Belmont Correctional Institution, | : |                      |
| Respondent.                       | : |                      |

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DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #17) AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #20); OVERRULING PETITIONER'S OBECTIONS THERETO (DOC. #18); SUSTAINING RESPONDENT'S MOTION TO DISMISS (DOC. #13); DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (DOC. #2) WITH PREJUDICE; JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; DENYING CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; TERMINATION ENTRY

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Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz in his Report and Recommendations (Doc. #17), and his Supplemental Report and Recommendations (Doc. #20), as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filings in their entirety. Petitioner's Objections to the Report

and Recommendations (Doc. #18) are OVERRULED for the reasons explained in the Supplemental Report and Recommendations.<sup>1</sup>


Accordingly, the Court SUSTAINS Respondent's Motion to Dismiss (Doc. #13), and DISMISSES the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus (Doc. #2) WITH PREJUDICE.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be *objectively* frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: June 20, 2016

  
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WALTER H. RICE  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Petitioner has not filed Objections to the Supplemental Report and Recommendations.